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FEDEX KINKO'S OFFICE AND PRINT SERVICES, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION

STEPHEN WHITEWAY, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

FEDEX KINKO'S OFFICE AND PRINT
SERVICES, INC., and DOES 1 through 25,
inclusive,

Defendants.

Case No. C 05-02320 SBA (JCS)

**STIPULATED PROTECTIVE ORDER AND
[PROPOSED] ORDER**

Date Action Filed: May 19, 2005

Trial Date: Not set

1
2 **I. FINDINGS**

3 It is desirable for the parties and their respective counsel to coordinate efforts and to exchange
4 information for purposes of this action in the most expeditious fashion possible, with a minimum of
5 burden, expense and delay.

6 This Protective Order is intended to protect confidential and proprietary information and
7 documents that may be sought in discovery, while ensuring that the parties may obtain and pursue
8 discovery with a minimum of delay and expense.

9 Fed. R. Civ. P. 26(c) provides for the issuance of protective orders limiting the disclosure of
10 confidential information, including confidential commercial information, in appropriate
11 circumstances.

12 The entry of this Protective Order will permit discovery to proceed more expeditiously and
13 with less expense by, among other things, providing protection of confidential information.

14 **II. PROTECTION OF CONFIDENTIAL MATERIAL**

15 1. The following words have the following meanings for the purposes of this order:

16 a. "Documents" means all documents, and the information contained therein,
17 including but not limited to the following:

18 i) documents produced in response to document requests or subpoenas;

19 ii) interrogatory answers, including documents referred to in such
20 answers;

21 iii) deposition transcripts, including exhibits; and

22 iv) admissions in response to requests for admissions.

23 b. "Confidential Material" means Documents, or portions thereof, containing
24 sensitive business and/or proprietary information which the parties or any Producer in good faith
25 reasonably determine to be within the scope of Fed. R. Civ. P. 26(c)(7) and designates as
26 "CONFIDENTIAL" or "CONFIDENTIAL FOR ATTORNEY'S EYES ONLY," as described below.

27 c. "Producer" means a party to this action or a non-party to this action that
28 produced Documents during discovery in this action.

1 d. "Designate" means placing a confidentiality legend on a Document as
2 described below.

3 e. "Designator" means a party to this action that Designates Documents as
4 Confidential Material.

5 2. Designation of Documents as Confidential Material:

6 a. The Parties shall act in good faith to designate as Confidential Material only
7 those portions of Documents that contain sensitive business and/or proprietary information.

8 b. A party may Designate Documents as "CONFIDENTIAL" or
9 "CONFIDENTIAL FOR ATTORNEYS' EYES ONLY" under the terms of this Protective Order if
10 the party believes that such material constitutes or reveals information that is not publicly available, a
11 confidential trade secret, or other proprietary or confidential business information that requires the
12 protection afforded herein. The designation of material as such shall not constitute a presumption
13 that the material has been appropriately designated and is without prejudice to the right of a party to
14 challenge such designation;

15 c. Designation of Documents as Confidential Material shall be made by placing
16 one of the following two legends (hereinafter referred to as the "Confidential Legend") on the face of
17 the document and on each page so designated:

18 i. "CONFIDENTIAL," or

19 ii. "CONFIDENTIAL FOR ATTORNEYS' EYES ONLY."

20 d. A party or a Producer shall designate a Document as Confidential Material by
21 placing the Confidential Legend on the Document before serving it;

22 e. Designation of responses to interrogatories or requests for admissions and the
23 information contained therein as Confidential Material shall be made by placing the Confidential
24 Legend on each page of any response containing information designated as Confidential Material
25 before service of the response;

26 f. A party may designate deposition testimony, including exhibits, as
27 Confidential Material if the deponent is or was employed or retained by the party and testifies about
28 Confidential Material of that party. Designation of deposition testimony, including exhibits, as

1 Confidential Material shall be made by placing a statement to such effect on the record in the course
2 of the deposition of any such person, or by notifying all parties in writing within ten (10) days of the
3 Designator's receipt of the transcript. If such designation is made during the deposition, the Court
4 reporter shall place the Confidential Legend on each page of the transcript containing material
5 designated as Confidential Material. If designation is made during the 10-day period after receipt of
6 the transcript, all parties in possession of the transcript at the time of receiving the designation or
7 thereafter shall place the Confidential Legend at the top of each page so designated and each
8 photocopy thereof.

9 g. If Confidential Material, or quotes from or references that would reveal
10 Confidential Materials, are to be included in papers filed with or otherwise disclosed to the Court, the
11 Confidential Legend shall be placed on the cover page of each such papers, and such papers shall be
12 filed under seal and shall not be disclosed to any person unless ordered by the Court. The procedures
13 necessary to preserve the confidentiality of Confidential Materials presented at trial of this action
14 shall be considered at or prior to the beginning of such trial.

15 h. Designations of Documents other than those mentioned in paragraphs 2(c) -
16 2(f) of this Order as Confidential Material shall be made by placing the Confidential Legend on the
17 face of each such Document.

18 i. The categories of documents that may be designated CONFIDENTIAL FOR
19 ATTORNEYS' EYES ONLY are limited to the following: personnel files, employees' salaries,
20 employees' disciplinary history, employees' addresses and phone numbers, and other employee
21 personal information (other than Whiteway), and confidential financial statements of FedEx Kinko's.
22 If either party later expresses a desire to designate additional categories of documents
23 CONFIDENTIAL FOR ATTORNEYS' EYES ONLY, the parties agree to negotiate in good faith
24 over amendments to this Stipulated Protective Order to include any additional appropriate categories
25 of documents. If no agreement is reached, the parties will seek court involvement to resolve the
26 dispute.

27 3. Confidential Material subject to this Order shall be used solely for the purpose of this
28 action.

1 4. Documents or information need not be treated as Confidential Material by any party to
2 whom the information or Documents are produced if the Documents or information (i) was in the
3 possession or existed in the files of that party prior to production in this action or (ii) are received at
4 any time from a non-party in rightful possession of such information and under no obligation not to
5 disclose; provided, however, that, notwithstanding (i) and (ii) above, Documents or information in the
6 possession of any party, or non-party, or its attorneys, by virtue of a binding confidential relationship
7 or that is subject to a protective order or received in the course of settlement discussions in this or any
8 other action, shall remain confidential and shall continue to be subject to the use and disclosure
9 restrictions set forth in the protective order in that other litigation.

10 5. All Documents Designated as "CONFIDENTIAL" shall be kept in a confidential
11 manner and may be disclosed only to and among the following persons, and only to the extent
12 necessary for such recipient to perform assigned tasks:

13 a. attorneys for any of the parties, including in-house counsel who are
14 participating or assisting in the conduct of this action, employees or agents of any party, or
15 employees of any party's attorneys who are working under such attorneys' supervision;

16 b. any person who otherwise would be entitled to review said Documents as a
17 result of contractual obligations or local, state, federal or other law, provided, however, that the party
18 disclosing said Documents pursuant hereto advises all other parties, in writing, of the production
19 demand thirty (30) days in advance of such production, to the extent practicable, and provided further
20 that nothing in this Protective Order purports to limit the right under Labor Code Section 1198.5(a);

21 c. any current or former director, officer, employee, or agent of a party who is
22 required by such party to work directly on this action, including anyone responsible for the
23 supervision or settlement of this action, but only in connection with such work;

24 d. any person not employed by a party or retained by a party or its counsel, of
25 whom testimony is taken or may be taken in this action, except that such a person may see and retain
26 copies of said Documents only during his or her testimony, in preparation therefore, or in discussions
27 of possible testimony, and may not thereafter retain copies of any said Documents;
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1 e. any person not employed by a party who is expressly retained by the party or
2 by an attorney described in paragraph 7(a) above to assist in preparation of this action, including but
3 not limited to experts;

4 f. The Court, Court personnel, and Court reporters or their personnel, involved in
5 the adjudicative process.

6 6. All Documents Designated as "CONFIDENTIAL FOR ATTORNEYS EYES ONLY"
7 shall be kept in a confidential manner and may be disclosed only to and among the following persons,
8 and only to the extent necessary for such recipient to perform assigned tasks:

9 a. attorneys for any of the parties, but not including in-house counsel who are
10 participating or assisting in the conduct of this action, employees or agents of any party, or
11 employees of any party's attorneys who are working under such attorneys' supervision;

12 b. any person who otherwise would be entitled to review said Documents as a
13 result of contractual obligations or local, state, federal or other law, provided, however, that the party
14 disclosing said Documents pursuant hereto advises all other parties, in writing, of the production
15 demand thirty (30) days in advance of such production, to the extent practicable;

16 c. any person not employed by a party who is expressly retained by the party or
17 by an attorney described in paragraph 7(a) above to assist in preparation of this action, including but
18 not limited to experts, provided that the party intending to make such disclosure must first serve on
19 all parties notice of such intent, and may not make the disclosure until the following procedure as
20 been exhausted. Any party may object to such disclosure by serving a notice of objection within five
21 (5) days of service of the intent to disclosure. Upon service of such notice of objection, the party
22 intending to make the disclosure must file a motion for a determination that the material may be
23 disclosed. The procedure for such motion shall be governed by California Northern District Local
24 Rule 37-1;

25 d. The Court, Court personnel, and Court reporters or their personnel, involved in
26 the adjudicative process.

27 7. Any person who discloses Confidential Material to any person identified in paragraphs
28 5 or 6 shall advise each person to whom such disclosure is made of the terms of this Protective Order.

1 If Confidential Material is disclosed to a person identified in paragraph 5(e) or 6(c), that person shall
2 sign a written Certification ("Consent Agreement") that he is familiar with the contents of this
3 Protective Order and consents to be bound by its terms. A form of such Consent Agreement is
4 attached hereto as Exhibit A. A copy of each Consent Agreement so obtained shall be retained by the
5 party that discloses Documents Designated as "Confidential" to such person. No party shall be
6 required to produce such Consent Agreement to any other party except upon an order of the Court.

7 8. Any party may object in good faith, at any time, to the designation of any Documents
8 as Confidential Material by serving a written notice of objection to such designation upon all parties.
9 Such notice of objection shall identify specifically the Documents, material or information as to
10 which the objecting party wishes to have the designation removed and shall set forth the reasons for
11 such removal. The Documents, material or information subject to the objection will then lose the
12 protection of this Protective Order unless the Designator, within ten (10) days after service of such
13 notice of objection, files and serves a motion for a determination that the material should be protected
14 as Confidential Material under the terms of this Protective Order. The procedure for such motion
15 shall be governed by California Northern District Local Rule 37-1. If such a motion is timely filed
16 and served, the designated material in question shall continue to be treated as Confidential Material
17 subject to the terms of this Protective Order until the Court orders otherwise. Calculation of time
18 periods under this paragraph shall be governed by Fed. R. Civ. P. 6.

19 9. The restrictions set forth in Paragraphs 5 and 6 on the use of Confidential Material do
20 not apply to any use by the Producer of such Confidential Material.

21 10. Within ninety (90) days after conclusion of this action, whether by dismissal, final
22 judgment, completion of appeal, or settlement, counsel of record shall, upon written request from the
23 Producer or Designator, return to the Producer or Designator all Confidential Material covered by this
24 Protective Order or, in the alternative, at the option of the Producer or Designator, shall immediately
25 after that time, destroy all such Confidential Material and provide, upon written request of the
26 Producer or Designator, the Producer or Designator with a sworn declaration to that effect.

27 11. Originals and copies of deposition transcripts, responses to interrogatories, responses
28 to requests for admissions, and responses to requests for production of documents in this action shall

1 not be routinely filed with the Court. Any party may offer any Confidential Material in connection
2 with motions or briefs, or at hearings, or trial in this action. Any Confidential Material submitted to,
3 presented to, or filed with the Court prior to trial shall be placed in a sealed envelope or other
4 appropriate container by the party making the submission and shall not be made available to persons
5 other than as authorized by this Protective Order. The envelope or container shall bear the following
6 statement:

7 CONFIDENTIAL MATERIALS. Subject to Protective Order in WHITEWAY V.
8 FEDEX KINKO'S OFFICE AND PRINT SERVICES, INC., Case No. C 05-02320 SBA (JCS). This
9 envelope [or container] contains documents filed in this case by [name of party] and is not to be
10 opened nor the contents to be displayed nor revealed except by the Court or by order of the Court.
11 Confidential Material shall not lose its confidential status because it is used in any Court proceeding
12 herein.

13 12. If a Producer produces "Confidential Material" without designating it as such and
14 subsequently fails to designate a document as "Confidential Material" pursuant to Section 2 of this
15 Protective Order, the Producer may designate such material as "Confidential Material" as follows:

16 a. Within thirty (30) days of the discovery of its failure to designate, the Producer
17 must give written notice to all parties who received copies of the produced Documents that the
18 Producer claims said Documents, in whole or in part, to be Confidential Material and must state the
19 nature of the confidentiality; and

20 b. Upon receipt of such notice, all parties who have received copies of the
21 produced Documents shall promptly use reasonable efforts to place the Confidential Legend on the
22 Documents designated as Confidential Material;

23 c. Challenges to the designation of information as Confidential Material in
24 accordance with the terms of this paragraph shall be handled pursuant to the procedure set forth in
25 Section 9 of this Protective Order.

26 13. Neither the provisions of this Protective Order, nor any designation or failure to
27 designate any Document as Confidential Material hereunder shall, in this action or any other
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1 litigation, constitute a *per se* waiver of any party's assertion of confidentiality with respect to any
2 other Document covered or not covered by this Protective Order.

3 14. Notwithstanding any other provision of this Protective Order, at any time, all of the
4 parties in this action may, by written agreement, designate any Documents as Confidential Material
5 subject to the protections herein.

6 15. This Protective Order and the agreements embodied herein shall survive the
7 termination of this action, whether by dismissal, final judgment, completion of appeal or settlement,
8 and shall continue in full force and effect thereafter. Once the Court has signed this Protective Order,
9 the Court shall retain jurisdiction over any disputes arising under this Order, whether they occur
10 before or after such termination.

11 16. Any party may, under the procedures set forth in Local Rule 37-1, move the Court for
12 an order modifying, amending, or dissolving the terms of this Protective Order.

13 17. The provisions of this Protective Order shall apply to any Documents produced in this
14 action before or after the date this Protective Order is executed.

1 18. This Protective Order is binding on the signatories hereto pending the Court's
2 adoption of this or an amended Protective Order. Pending submission to the Court, facsimile
3 signatures of counsel will be binding. Counsel shall provide original signatures as soon as reasonably
4 possible.

5
6 Dated: 2/13/06


Jonathan M. Cohen, Esq.

Dylan B. Carp, Esq.

KIRKPATRICK & LOCKHART NICHOLSON GRAHAM LLP

Four Embarcadero Center, 10th Floor

San Francisco, CA 94111

Counsel for Defendant

FEDEX KINKO'S OFFICE AND PRINT SERVICES, INC.

7
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10
11
12 Dated: _____

Scott Edward Cole, Esq.

Matthew R. Bainer, Esq.

Clyde H. Charlton, Esq.

SCOTT COLE & ASSOCIATES, APC

1970 Broadway, Suite 950

Oakland, CA 94612

Counsel For Plaintiff

STEPHEN WHITEWAY

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17
18 Dated: 2/15/06


FEDEX KINKO'S OFFICE AND PRINT SERVICES, INC.

By: Ric Liskow

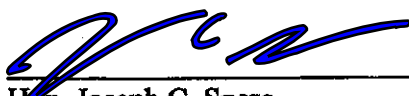
19
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21 Dated: _____

STEPHEN WHITEWAY

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24 **[PROPOSED] ORDER**

25 **IT IS SO ORDERED.**

26 Dated: February 27, 2006


Hon. Joseph C. Spero
U.S. Magistrate Judge

18. This Protective Order is binding on the signatories hereto pending the Court's adoption of this or an amended Protective Order. Pending submission to the Court, facsimile signatures of counsel will be binding. Counsel shall provide original signatures as soon as reasonably possible.

Dated: _____

Jonathan M. Cohen, Esq.
Dylan B. Carp, Esq.
KIRKPATRICK & LOCKHART NICHOLSON GRAHAM LLP
Four Embarcadero Center, 10th Floor
San Francisco, CA 94111
Counsel for Defendant
FEDEX KINKO'S OFFICE AND PRINT SERVICES, INC.

Dated: 2-16-06

Scott Edward Cole, Esq.
Matthew R. Bainer, Esq.
Clyde H. Charlton, Esq.
SCOTT COLE & ASSOCIATES, APC
1970 Broadway, Suite 950
Oakland, CA 94612
Counsel For Plaintiff
STEPHEN WHITEWAY

Dated: _____

FEDEX KINKO'S OFFICE AND PRINT SERVICES, INC.
By: Ric Liskow

Dated: 2-16-06

STEPHEN WHITEWAY

[PROPOSED] ORDER

IT IS SO ORDERED.

Dated: _____

Hon. Joseph C. Spero
U.S. Magistrate Judge